IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8066 OF 1988

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALVANTBHAI MOHANBHAI TRIVEDI & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 8066 of 1988

MR. M.K. VAKHARIA for Petitioner Nos. 1-4

MR. M.S. RAO, AGP for Respondent No. 1

RULE SERVED for Respondent Nos. 2-3

NOTICE SERVED for Respondent No. 4

MR. H.S. MUNSHAW for Respondent No. 5

MR. J.D. AJMERA for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/03/2004

ORAL JUDGEMENT

1. The present petition is filed by the petitioners challenging order dated 22nd September, 1988 (Annexure-A) passed by respondent no.1 and order dated 3rd November, 1988 passed by respondent no.2 (Annexure-B).

2. The facts of the case are that the petitioners were formerly working under Sarvodaya Scheme, which came to be closed later on. It so happened that when the said Sarvodaya Scheme came to be closed, the Government, by its Resolution dated 30th July, 1981, decided that the employees working under that scheme, who had completed the service of one year or more than one year as on 31st March, 1981, be absorbed as ex-cadre employees in the District Panchayats with their current wages and allowances. The employees, who were so absorbed in the District Panchayats as ex-cadre employees, did not find the said absorption favourable and, therefore, the association of the ex-cadre employees represented the matter before the Government to absorb on regular basis and to give them benefits, which are available to other regular employees of the District Panchayats. The Government once again considered the hardships faced by the ex-cadre employees and passed another resolution dated 15th December, 1987 whereby it was decided that the ex-cadre employees be absorbed in the regular cadre on such terms and conditions, as are mentioned in the said Government Resolution. One of the condition on which the absorption was to take place was that, `these ex-cadre employees will stand absorbed in District Panchayats with effect from 1st April, 1987 and only from that day, they will be entitled for promotion, leave, pension and other benefits'. By that very resolution, it was also decided that 34 employees, whose names were mentioned in Schedule-II, who did not possess the requisite educational qualification for the post of Clerk-Typist, by giving them exemption, as a special case, were to be absorbed as Clerk-cum-Typist in the pay scale of Rs.950-1500.

After the aforesaid resolution dated 15th December, 1987, was passed, exercise of pay fixation of individual was undertaken and the pay was fixed. As is the case of the petitioners, their pay was fixed by the concerned authority, as mentioned in paragraph-3.3 of the petition, which reads as under:

"... ... ...The petitioners submit that thereafter the pay of the petitioner is fixed in the scale of Rs.950-1500 and accordingly the pay of the petitioners nos.1, 2, 3 and 4 were fixed at Rs.1275/-, 1275/-, 1200/- and Rs.1300/-

respectively ...."

When the matter came to the notice of the Government, the Under Secretary issued a letter dated 22nd September, 1988, and instructed the Development Commissioner to interpret the contents of the Government Resolution dated 15th December, 1987 correctly, as set out in the letter. Thereafter, the Development Commissioner issued necessary instructions to the District Development Officer by a letter dated 3rd November, 1988 enclosing the copy of the letter dated 22nd September, 1988 of the Under Secretary. It is being aggrieved of these two letters that the present petition is filed praying that the order dated 22nd September, 1988 (Annexure-a) and the order dated 3rd November, 1988 (Annexure-B) be quashed and set aside.

3. Mr.Mehul Vakharia, learned Advocate for the petitioners, strenuously tried to persuade this Court that the two impugned orders, being Annexures A and B, are issued misreading the contents of the Government Resolution dated 15th December, 1987 and by virtue of these two letters, their pay fixation, which is already made by the concerned authority, is going to be affected and, therefore, both the impugned letters be quashed and set aside.

4. An affidavit-in-reply is filed by one Shri Kishorbhai Bhanuprasad Buch, the then District Development Officer of Amreli, wherein it is set out in detail as to what error is committed in fixing the pay of the petitioners. In paragraph-5, it is stated that,

"... ...It is submitted that the petitioner no-4 was paid Rs.380 salary + Rs.90 fixed D.A. + Rs.28-50 interim relief and in all Rs.505-50 were received by him, except the HRA as on 31-3-1987 and the said pay and allowances were paid to him in view of the protection given to him under the settlement with the Government. ... ..."

It is further stated that,

"... ... It is submitted that petitioner no.4 was drawing the salary as on 31-3-1987 at Rs.350 + 97 fixed D.A. + 28.50 interim relief totaling Rs.505-50. Moreover 20% of Rs.380/were included. Therefore the total salary came to Rs.581/- and the same has been fixed

> correspondingly in the scale of Rs.950-1500. It is submitted that the petitioner's pay was fixed at Rs.1300/- which was a wrong fixation and therefore Government's guidance was sought by the office of respondent no-6 vide the letter dated 24-3-1988. ... ..."

The deponent has also explained the error, which has crept in while fixing the pay scale of the petitioners by giving illustrations of other employees of the comparable class, who were much senior to the petitioners. Like one Smt.Jyoti J.Bhatt, who entered the service on 3.2.1971 and her salary as on 1.1.1986 was fixed at Rs.1200=00 and was to get Rs.1225=00 on 31.3.1987. As against that, petitioner no.4 stood absorbed in District Panchayat only with effect from 1.4.1987 and his pay was fixed at Rs.1300/-. Thus, it was clear that there was an apparent error committed in fixing the pay of the petitioners and, therefore, after getting the guidance from the Government, the same was sought to be corrected and it is at that stage that the petitioners approached this Court by filing this petition challenging the impugned letters, Annexures A and B.

5. Mr.J.D.Ajmera, learned Advocate for respondent No.6, submitted that the petitioners stood absorbed in District Panchayat only with effect from 1.4.1987 and it was only due to the indulgence shown by the Government in the form of Government Resolution dated 15th December, 1987 that their status of `ex-cadre' was changed to that of `regular cadre'. He submitted that therefore, the present petition is required to be dismissed on a short ground that the petitioners do not have any right to complain regarding the so-called wrong fixation, more particularly, in light of the fact that the said fixation was by a mistake, a wrong fixation of pay was made and when it came to the notice of the authorities, the same is sought to be corrected by seeking guidance from the Government. The guidance is given in the nature of the impugned two letters viz. Annexures A and B wherein no error is committed which will warrant interference at the hands of this Court.

6. Mr.M.S.Rao, learned AGP, submitted that both the impugned letters, Annexures A and B, are self explanatory and the same are to be read with Government Resolution dated 15th December, 1987. He further submitted that both these letters are in line with the Government Resolution and the petition is required to be disposed of, as submitted by the learned Advocate for the District Panchayat.

7. Heard the learned Advocates for the parties. The learned Advocate for the petitioners, despite his best efforts, is not able to convince this Court that both the impugned letters are issued by misreading Government Resolution dated 15th December, 1988. It is found otherwise. The contents of the Government Resolution dated 15th December, 1987 are clear and it is also clear from the same that the pay fixation, made by the concerned authority, was erroneous. Therefore, the impugned letters were required to be issued by the concerned authority.

8. Taking into consideration the contents of the Government Resolution dated 15th December, 1987, the petitioners stood absorbed in regular service of District Panchayat only with effect from 1st April, 1987 and that too, in the pay scale of Rs.950-1500, therefore, their salary was to be fixed accordingly. Error, if any, committed, if, sought to be corrected, the same does not warrant any interference at the hands of this Court.

In the result, this petition fails and the same is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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